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In the Supreme Court of the United States

OCTOBER TERM, 1970

NO. ~~C158~~ 71-5045

DONALD and EDNA LINDSEY,
and All Other Persons Similarly Situated,
Appellants,

vs.

DOROTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, In His Capacity as Judge of the District Court of the State of Oregon for the County of Multnomah; and ALL PERSONS SIMILARLY SITUATED HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH,
Appellees.

On Appeal from the United States District Court for the District of Oregon

BRIEF OF LEGAL SERVICES OF GREATER MIAMI, INC., AMICUS CURIAE

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MIAMI REVIEW — 371-4853 — 377-3721

in the
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OCTOBER TERM, 1970

NO. 6158

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On Appeal from the United States District Court for the District of Oregon

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MOTION BY LEGAL SERVICES OF GREATER MIAMI, INC., PURSUANT TO RULE 42(3), UNITED STATES SUPREME COURT RULES, FOR LEAVE TO PROCEED AMICUS CURIAE IN SUPPORT OF APPELLANTS

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1. Petitioner, LEGAL SERVICES OF GREATER MIAMI, INC., has obtained the consent of the Appellants, DONALD and EDNA LINDSEY and one of the Appellees, JUDGE WILLIAM C. BEERS, to file the Amicus Curiae brief enclosed herewith. Petitioner has sought the consent of Appellee, DOROTHEA M. NORMET, but the same has been refused.

2. Petitioner is a non-profit corporation organized on June 6, 1966, pursuant to Economic Opportunity Act for the sole purpose of furthering "the cause of justice among persons living in poverty . . . " 42 U.S.C. § 2809(3). Consistent with this purpose, Petitioner employs some twenty attorneys to represent impoverished persons in Dade County, Florida in non-criminal, non-fee generating legal matters, including legal disputes arising from landlord-tenant relationships.

3. Since the date of its incorporation, attorneys employed by Petitioner have represented innumerable tenants in both trial and appellate stages of landlord-tenant proceedings. Many of the appellate decisions cited in our brief enclosed herewith are the product of the vigorous prosecution of the claims of tenants represented by Petitioner's employees. See, e.g., **Brownlee v. Sussman,** 238 So.2d 317 (3d Dist. 1970), **State ex rel. Brown v. Sussman,** 235 So.2d 46 (3d Dist. 1970) and **Sawyer v. Robbins,** 213 So.2d 515 (3d Dist. 1968). In each and all of these cases, tenants sought to vindicate legal obligations and responsibilities imposed upon their landlords which allegedly flowed from the landlord-tenant relationship.

4. Petitioner's interest in this appeal stems from the frustration we have experienced in attempting to enforce the legal rights of tenants through unjust, archaic, inadequate and, in Petitioner's opinion, unconstitutional laws relating to landlord and tenant. These laws, rules and procedures, with all their inequities, are, collectively, the Florida counterpart to the Oregon provisions under constitutional scrutiny in this cause.

5. In its brief, Petitioner does not attempt to present constitutional arguments which, we are confident, will be adequately and completely presented by the briefs of the parties to this action. Our sole purpose is to apprise the court of the representative nature of Appellants' claims as exemplified by the status of Florida's landlord-tenant law. We make no legal arguments, but limit our discussion solely to the workings of the adversary relationship of landlord and tenant in Florida. We give special emphasis to eviction procedures and to the tenant's remedies for breach of his lease.

6. We confidently anticipate that the briefs filed by the parties to this action will not discuss the landlord-tenant law of states other than that of Oregon. However, the influence and effect that the decision in this case may have on the laws of other states, including that of Florida, is clearly relevant and material to this Court's deliberations and its determination of this cause. By way of this Amicus Curiae brief, we seek to give substance to the immediately preceding statement by informing the court of the national magnitude of the inequities exposed by this appeal.

WHEREFORE, and for the foregoing reasons, LEGAL SERVICES OF GREATER MIAMI, INC., respectfully moves this Honorable Court for leave to file the Amicus brief enclosed herewith.

Respectfully submitted,

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By _____
HOWARD W. DIXON, ESQ.

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Appellees.

On Appeal from the United States District Court for the District of Oregon

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BRIEF OF AMICUS CURIAE SEEKING REVERSAL

STATEMENT

Our purpose herein is to analyze the Florida summary eviction process in light of both the comparable Oregon rules under constitutional scrutiny in this case, and the ordinary rules of Florida practice applicable to other civil proceedings. In so doing, we hope to make evident the fact that Oregon's procedures are not unique to that state, but are typical and representative of nationwide discrimination against poor tenants.

Because of the limited scope of this brief and to avoid redundant legal argument, we leave virtually all constitutional discourse to the main briefs filed in this appeal.

STATEMENT OF POINT TO BE ARGUED

The summary eviction procedure described in Appellants' brief and the legal remedies provided to tenants with all their inherent inequities, are not unique to the State of Oregon but are typical and representative of the state of landlord-tenant law throughout the country as exemplified by Florida's comparable provisions.

ARGUMENT

The summary eviction procedure described in Appellants' brief and the legal remedies provided to tenants, with all their inherent inequities, are not unique to the State of Oregon but are typical and representative of the state of landlord-tenant law throughout the country as exemplified by Florida's comparable provisions.

Introduction

While in theory, the restrictive procedural rights afforded to tenants described below apply to all tenants, in practice, they work their injustice primarily on impoverished lessees. This is because the poor, sometimes by choice, but more often by tradition perpetuated by lessors of marginal and slum property, do not generally enter into written leases to protect their leasehold interests.

The term of tenancy for these tenants is measured by the rental period for which the rent is paid — usually from week to week. The tenancy may be terminated summarily and without reason. It is thus appropriately termed, a tenancy-at-will. F.S. § 83.01. Nevertheless, it is the common practice of landlords to evict tenants delinquent in the payment of rent pursuant to rent delinquency proceedings rather than by summary termination.[1] Accordingly, the remainder of this brief shall address itself primarily to the inequities inherent in the Florida eviction procedure for non-payment of rent. Also discussed will be the tenant's remedies, or lack thereof, for compelling the landlord to make repairs.

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[1]Under Florida law, even when the reason for eviction is non-payment of rent, the landlord may, at his option and without ever revealing his real motive, remove the tenant at will. In such case, and assuming the landlord has given the proper statutory notice — seven days for a week-to-week tenant, F.S. § 83.03 — even a claim that the rent has been paid in full and on time, affords no defense to the eviction action. F.S. § 83.20(1). Moreover, the holdover tenant may be evicted by the same summary eviction procedure applicable to eviction for non-payment of rent. F.S. § 83.21. The only cost to the landlord in choosing to evict by terminating the tenancy rather than by a non-payment of rent proceeding, is that the notice required by the former is four days longer than that required by the latter. This may be a small price to pay to avoid the difficulties inherent in proving rent delinquency; however, as indicated by the text immediately preceding this footnote, landlords almost invariably choose to evict on grounds of non-payment of rent.

Initial Procedure

In Florida, eviction of a delinquent tenant proceeds as follows. The landlord delivers a written three-day notice to the tenant requiring either payment of the rent or possession of the premises. F.S. § 83.20(2). If after three days the tenant fails to pay the claimed arrearages and remains in possession, the landlord may file an action for tenant removal.[2] F.S. § 83.21.

Jurisdiction

The action may be brought in any one of three courts having concurrent landlord-tenant jurisdiction: County Court F.S. § 34.01(3); the Civil Court of Record F.S. § 33.14[3]; or the County Judges Court F.S. § 36.01(2). Additionally, despite statutory language seeming to limit jurisdiction to rent recovery actions for amounts not in excess of $100, Justice of the Peace Courts regularly preside over all types of tenant removal actions including actions for non-payment of rent, the latter, often in utter disregard of the amount of arrearages claimed to be owed. But, see **State ex rel. Yates vs. Snowden**, No. 70-16935 (Fla. Cir. Ct. 11th Cir., Oct. 28, 1970) (prohibiting Justice of the Peace from entertaining delinquent tenant eviction jurisdiction where rent owing is in excess of $100).

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[2]Compare ORS § 105.115 allowing the tenant a ten-day grace period after default on rent payment and before suit is filed.

[3]Apparently, in those counties where Civil Courts of Record are organized, County Courts have been abolished. See, e.g., Chapter 11357, Laws of Florida (1925) and Chapter 11970, Laws of Florida (1927).

The importance of the initial choice of forum cannot be overstressed, particularly where the tenant demands a jury trial. When such a demand is made and a jury is not in attendance, "the court shall order a special venire . . . " and "the party demanding the jury shall deposit sufficient money with the clerk to pay jury fees . . . " F.S. § 51.011(3)

In Dade County, Florida, juries are usually in attendance in the Civil Court of Record, but never in attendance in the Justice of the Peace Courts. Thus, despite conflicting Supreme Court decisions concerning the validity of the money deposit requirement [compare **State ex rel. Jennings vs. Peacock,** 171 So. 821 (Fla. 1937) with **State ex rel. Murphy-McDonald Builders Supply Company vs. Parks,** 43 So.2d 347 (Fla. 1949)], a demand for jury trial in the Justice of the Peace Court is often strongly discouraged by insistence upon payment of the prerequisite fee; more often it is rejected outright. See, e.g., **Pratt vs. Jaynal,** No. 70-20443 (Fla.Cir. Ct. 11th Cir., Nov. 9, 1970) (ordering jury trial in the Justice of the Peace Court. All jury cases filed thereafter before this Justice of the Peace have been transferred to the Civil Court of Record). A jury trial in the Civil Court of Record is automatic upon demand.

Service of Process

Unlike ORS § 105.135 which requires that the summons, in tenant removal cases, "shall be served . . . as in other actions" and, despite the **in personam** nature of lease forfeiture proceedings in Florida, [**Thalheimer vs. Tischler,** 46 So. 514 (Fla. 1908)], the commonly accepted requirement that the defendant must be personally served

(F.S. § 48.031) has been relaxed in removal actions. Service of process may be had by "attaching it to some part of the premises involved in the proceedings" if the defendant cannot be found in the county. F.S. § 83.22. The opportunity for "sewer service" is evident. Moreover, if personal service is attempted, the required "search for the defendant," if made at all, is usually limited to a knock on the door. Finally, in ghetto neighborhoods, even when process is attached to the premises, official looking papers so attached have a habit of disappearing before they reach the person for whom they are intended.

Defending Against The Eviction Action

The summary eviction rules instruct the defendant to raise "all defenses of law or fact" in his answer which must be served within five days after service of process.[4] F.S. § 51.011(1). In all other civil actions, "[a] party may . . . state . . . as many separate . . . defenses as he has, regardless of consistency and whether based on legal or equitable grounds or both." Rule 1.110(g) Florida Rules of Civil Procedure. These rules have been construed to deny defendants in eviction actions the right to raise equitable defenses. **Brownlee vs. Sussman,** 238 So.2d 317 (3d Dist. 1970) and **Avvenire College for Women, Inc., vs. G.B.D., Inc.,** 240 So.2d 191 (3d Dist. 1970). [Oregon's procedure is comparable. See **Lindsey vs. Normet,** Civil No. 70-8 (D. Ore. dated Sept. 10, 1970) at 6.] Indeed, some doubt exists even as to the kinds of legal defenses which will be per-

[4]Discovery is limited to the very expensive depositions on oral examination. Other means of discovery are allowed only by order of the court. F.S. § 51.011(2). Compare the wide range of discovery allowed, without court order, in ordinary civil proceedings. Rules 1.310-1.370 Florida Rules of Civil Procedure.

mitted. Compare **Brownlee, supra,** at 318 n. 1, disallowing the legal defense of "failure of consideration" with **Avvenire College for Women, Inc.,** allowing the legal defenses of "payment" and "waiver."

A long line of Florida cases hold that equitable claims —even those which, if successful, may defeat the eviction action — must be raised in a separate suit in a court of equity. Since landlord-tenant courts have no equitable powers, necessity dictates that the tenant proceed in a court other than the court in which the eviction is pending. See e.g., **Rader vs. Prather,** 130 So. 15 (Fla. 1930) and **Knight vs. Global Contact Lens, Inc.,** 220 So.2d 693 (3d Dist. 1969).

Procedurally, of course, the equitable claim is prosecuted and defended as an ordinary civil suit pursuant to the Florida Rules of Civil Procedure. Consequently, to enjoin the quickly progressing eviction action takes a manful effort by the tenant and an expedited hearing in the equity court. Moreover, prerequisite to obtaining any relief at all in equity, the tenant must deposit the rent claimed, but not yet proved, to be owing. **Rader vs. Prather, supra, Masser vs. London Operating Company,** 145 So. 79 (Fla. 1932) and **Nevins Drug Company vs. Bunche,** 63 So.2d 329 (Fla. 1953). Additionally, before a temporary injunction is issued, the Court may require that a bond be posted to further protect the landlord. **Masser vs. London Operating Company,** 145 So. 72, 74 (Fla. 1932). If the tenant cannot meet these requirements and is unsuccessful at enjoining or delaying the eviction action, the landlord is free to prosecute it to completion—even to the point of physically removing the tenant from the premises. And this may be accomplished long before a responsive pleading is due in the action in equity. Compare Rule

1.140(a) Florida Rules of Civil Procedure requiring a responsive pleading within twenty days to the five-day rule under summary procedures. F.S. § 51.011(1).

Perhaps in benevolent recognition of the difficulty and the unlikelihood of enjoining the eviction action while in progress, the courts have uniformally held that equity may relieve the forfeiture of premises "whether the lessor has or has not entered and dispossessed the tenant." **Rader vs. Prather**, 130 So. 15, 17 (Fla. 1930), see also, **Nevins Drug Company vs. Bunche, supra.** Little solace, however, can be gleaned from this after-the-fact remedy afforded the tenant whose family and belongings have been unceremoniously deposited on the street.

The Tenant's Remedy

In an effort to assert a more realistic remedy, in the case of **Brownlee vs. Sussman**, 238 So.2d 317 (3d Dist. 1970), the tenant attempted to defend a delinquent tenant removal action on the ground that the landlord was in serious violation of the minimum housing code.

The lower court struck the defenses and the appellate court affirmed on the ground that equitable defenses may not be raised in an eviction action. With the imperial naivete of Marie Antoinette's famous advice to "Let them eat cake," the Court suggested that perhaps a more appropriate remedy to correct housing code abuses would be a public nuisance action. **Brownlee vs. Sussman**, 238 So.2d 317, 319. This suggestion takes into account neither the long delays inherent in ordinary civil proceedings, including nuisance actions, nor the practical unavailability of such a remedy to a poor tenant, nor the substantive inflexibility of the nuisance remedy.

Taking the last point first; **State ex rel. Brown vs. Sussman,** 235 So.2d 46 (3d Dist. 1970), a suit to abate numerous unsanitary and health hazards and housing code violations, was found to state a cause of action for public nuisance, presumably because the conditions were deemed "injurious to the community as a whole." At 48. In the procedurally similar case of **Sawyer vs. Robbins,** 213 So.2d 515 (3d Dist. 1968), however, the landlord's failure to provide hot water was the only housing code violation claimed. The appellate court sustained an order of dismissal holding that "[a] violation of the minimum standard for rental housing set by a governmental authority may be but is not necessarily a nuisance."[5] At. 517.

Thus, substantively speaking, a public nuisance action is, at best, a limited legal tool for correcting housing code abuses. Moreover, to compel the impoverished tenant to file a nuisance action under these circumstances, is to ask a poor man to assume a rich man's remedy.

The tenant must first retain an attorney and agree to pay the costs of litigation. He must then wait many months before trial. At trial, he will be successful only if the court is satisfied that the conditions caused by the landlord's failure to repair are so serious as to annoy the community as a whole. Even if ultimately successful, the landlord will merely be compelled to make repairs, an obligation already imposed upon him by the minimum housing code. Through all of this, the tenant, if he wishes to retain possession of his premises, must keep current in the payment of rent.

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[5]Indeed, the court strongly intimated that "the complaint . . . alleged a contractual violation for which the (plaintiff) had adequate remedies at law." *Sawyer v. Robbins*, 213 So.2d at 517. Coming full circle, the same court, in *Brownlee, supra*, rejected its own suggestion and refused to recognize legal defenses interposed on a breach of contract theory claiming housing code violations alleged to have been committed by the landlord.

CONCLUSION

From the foregoing, it is evident that great disparity exists between the respective remedies afforded landlords and tenants to correct breaches arising from their contractual relationship. In contrasting the tenant's largely illusory remedies with the ease with which the landlord may pursue his eviction remedy, the unequal treatment before the courts and the notorious lack of access to the legal process provided to tenants should be obvious. Accordingly, for reasons argued by Appellants in this appeal, summary eviction procedures should be held discriminatory and unconstitutional.

WHEREFORE, Amicus Curiae prays that the judgment of the Court below be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this _____ day of June, 1971 served one copy of the foregoing Brief of Legal Services of Greater Miami, Inc., Amicus Curiae, upon each of the attorneys for the Appellees as listed below, by depositing true copies of same in the United States mail, postage prepaid.

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